

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

An expectation or plan that the recipient will return home with the support of Home and Community Based Services shall not, in and of itself, justify a decision that he is reasonably expected to be discharged to return home. The following factors shall be considered when making the determination of permanent institutionalization:

- The recipient must meet the criteria for Nursing Facility (NF) or Intermediate Care Facility for the Mentally Retarded (ICF/MR) level of care and services; and
 - The recipient's medical records from the facility shall be reviewed to determine if the recipient's condition is expected to improve to the extent that he will not require NF or ICF/MR level of care; and
 - Where the prognosis indicated in the medical records is uncertain or inconclusive, the Department may request additional medical information, or may delay the determination until the next utilization control review or annual Inspection of Care review, as appropriate.
2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

The son or daughter must establish, by a preponderance of the evidence presented to the Department, that he provided necessary care to the recipient, and the care he provided allowed the recipient to remain at home rather than in a medical institution.

3. The State defines the terms below as follows:

- **estate:**

All real and personal property and other assets including those in which the recipient had any legal or beneficial title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assignee of the deceased recipient through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

- **individual's home:**

The dwelling in which the recipient has an ownership interest, and which the recipient occupied as his primary dwelling prior to, or subsequent to, his admission to a medical institution.

- **equity interest in the home:**

Any equity interest in real property recognized under Idaho law.

- **residing in the home for at least one or two years on a continuous basis:**

Occupying the home as the primary dwelling and continuing to occupy such dwelling as the primary residence.

- **lawfully residing:**

Residing in a manor not contrary to or forbidden by law, and with the recipient's knowledge and consent.

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4. The State defines undue hardship as follows:

Undue hardship is defined as condition(s) that justify waiver of all or a part of the Department's claim against an estate. The purpose of the undue hardship waiver is to avoid the impoverishment of the deceased recipient's family due to the Department exercising its estate recovery right.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

An applicant for an undue hardship waiver must have a beneficial interest in the estate and must apply for the waiver within ninety (90) days of the death of the recipient or within thirty (30) days of receiving notice of the Department's claim, whichever is later. The filing of a claim by the Department in a probate proceeding shall constitute notice to all heirs.

Undue hardship waivers shall be considered in the following circumstances:

- The estate subject to recovery is the sole income-producing asset of the survivors where such income is limited; or
- Payment of the Department's claim would cause heirs of the deceased recipient to be eligible for public assistance; or
- The Department's claim is less than five hundred dollars (\$500) or the total assets of the entire estate are less than five hundred dollars (\$500), excluding trust accounts or other bank accounts.
- The recipient received medical assistance (MA) as the result of a crime committed against the recipient.

Any beneficiary of the estate of a deceased recipient may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully, because of undue hardship. An undue hardship does not exist if action taken by the recipient prior to his death, or by his legal representative, divested or diverted assets from the estate. The Department shall grant undue hardship waivers on a case by case basis upon review of all facts and circumstances, including any action taken to diminish assets available for estate recovery or to circumvent estate recovery.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Recovery shall be considered cost-effective when the Department's claim is \$500 or more, or when the total assets subject to recovery are \$500 or more, excluding trust accounts or other bank accounts.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

Recovery on a Lien Imposed During the Lifetime of the Recipient:

- Recovery shall be made on the lien from the recipient's estate, or at any time upon the sale of the property subject to the lien, but only after the death of the recipient's surviving spouse, if any, and only at a time when:
- The recipient has no surviving child who is under age twenty-one (21);

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- The recipient has no surviving child of any age who is blind or disabled as defined in 42 U.S.C. 1382c as amended; and
- In the case of a lien on a recipient's home, when none of the following is lawfully residing in such home who has lawfully resided in the home on a continuous basis since the date of the recipient's admission to the medical institution:
 - A sibling of the recipient, who was residing in the recipient's home for a period of at least one (1) year immediately before the date of the recipient's admission to the medical institution; or
 - A son or daughter of the recipient, who was residing in the recipient's home for a period of at least two (2) years immediately before the date of the recipient's admission to the medical institution, and who establishes by a preponderance of the evidence that he provided necessary care to the recipient, and the care he provided allowed the recipient to remain at home rather than in a medical institution.

Recovery Upon Sale of Property Subject to a Lien Imposed During the Lifetime of the Recipient:

Should the property upon which a lien is imposed be sold prior to the recipient's death, the Department shall seek recovery of all MA paid on behalf of the recipient, subject to the restrictions listed above. Recovery of the MA paid on behalf of the recipient from the proceeds from the sale of the property does not preclude the Department from recovering additional MA paid from the recipient's estate.

Recovery of Medical Assistance Paid:

The Department is required to recover the following:

- The costs of all MA correctly paid on or after July 1, 1995, on behalf of a recipient who was permanently institutionalized; and
- The costs of MA correctly paid on behalf of a recipient who received MA at age fifty-five (55) or older on or after July 1, 1994; and
- The costs of MA correctly paid on behalf of a recipient who received MA at age sixty-five (65) or older on or after July 1, 1988.

Recovery from the Estate of Spouse:

If the deceased recipient has no estate, recovery shall be made from the estate of his surviving spouse. A claim against the estate of a surviving spouse of a predeceased recipient is limited to the value of the assets of the estate that were community property, or the deceased recipient's share of the separate property, and jointly owned property.

Advance Notice of the Estate Claim:

The Department shall notify the recipient's authorized representative of the amount of the estate claim after the death of the recipient, or after the death of the surviving spouse. The notice shall include instructions for applying for an undue hardship waiver within ninety (90) days of the death of the recipient or within thirty (30) days of receiving notice of the Department's claim, whichever is later.

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